

IN THE IOWA DISTRICT COURT FOR CLAY COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

ROGER GINGER f/d/b/a L & L SERVICE
STANDARD,

Defendant.

LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("DNR") and for its claims against Roger Ginger f/d/b/a L & L Service Standard, ("Ginger") states as follows:

Introduction

1. The release of petroleum from underground storage tanks ("USTs") is a substantial public concern because it threatens public health and safety and the natural resources of the state. Ginger violated petroleum UST requirements at a site located in Everly, Iowa, by failing to permanently close USTs, failing to pay UST management fees, and failing to pay an administrative penalty. The State of Iowa, therefore, brings this action seeking civil penalties, injunctive relief, and enforcement of an administrative order against Ginger.

Parties

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa. *See Iowa Code* § 455A.2 (2005).

3. Ginger is a resident of Clay County, and formerly did business in the county as L & L Service Standard.

Jurisdiction

4. The DNR is authorized to regulate underground storage tanks (“USTs”) containing regulated substances, including petroleum products, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks. *See* Iowa Code §§ 455B.471-79 (2005).

5. The Environmental Protection Commission (“EPC”) is authorized to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. Iowa Code § 455B.474 (2005). The UST rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 135 and 136.

6. An “owner” of a UST is a person who owns the UST used for the storage, use, or dispensing of petroleum products. *See* Iowa Code § 455B.471(6)(a); 567 Iowa Admin. Code 135.2.

7. An “operator” of a UST is a person in control of, or having responsibility for, the daily operation of the UST. Iowa Code § 455B.471(5); 567 Iowa Admin. Code 135.2.

8. The owner or operator of tanks with over 1100-gallon capacity must submit a tank management fee of \$65 per tank by January 15 of each year until a UST is permanently closed. Iowa Code § 455B.479; 567 Iowa Admin. Code 135.3(5)(b).

9. A UST must be permanently closed if it has been out of operation for more than twelve months. 567 Iowa Admin. Code 135.15(1)(c).

10. To permanently close a UST, owners and operators must empty and clean them by removing all liquids and accumulated sludge, and either remove the UST from the ground or fill it with an inert solid material. 567 Iowa Admin. Code 135.15(2)(b).

11. The DNR must be given notification of the date of the scheduled permanent closure prior to the closing. 567 Iowa Admin. Code 135.15(2)(d).

12. Owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site during the process of permanently closing the UST. 567 Iowa Admin. Code 135.15(3)(a)-(d).

13. For all permanent tank closures, at least one water sample must be taken from the first saturated groundwater zone via a monitoring well or borehole. 567 Iowa Admin. Code 135.15(3)(b).

14. If contaminated soils or groundwater are discovered, owners and operators must comply with the corrective action requirements contained in 567 Iowa Admin. Code 135.7-135.12. 567 Iowa Admin. Code 135.15(3)(g).

15. A closure report must be submitted to the DNR within 45 days of a UST removal. 567 Iowa Admin. Code 135.15(3)(e).

16. Within 90 calendar days after a release of petroleum from a UST is confirmed, or another reasonable period of time determined by the DNR, owners and operators must submit a Tier 1 site assessment report to the DNR. 567 Iowa Admin. Code 135.9(11)(a).

17. A “Tier 1 site assessment” is the evaluation of a site for the purpose of determining the concentrations of chemicals associated with a petroleum release and an accurate identification of the risks to human health and the environment. 567 Iowa Admin. Code 135.9(1).

18. All assessment, corrective action, data analysis and report development must be conducted by or under the supervision of a certified groundwater professional. 567 Iowa Admin. Code 135.8(2).

19. A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which are not classified as “no action required” during the Tier 1 process. 567 Iowa Admin. Code 135.10(1).

20. A Tier 2 site cleanup report must be submitted within 180 days of the date the DNR approves or is deemed to approve a Tier 1 assessment report under 567 135.19(12). 567 Iowa Admin. Code 135.10(11)(a).

21. A person who violates a provision of Iowa Code chapter 455B, Division IV, part 8, or rule or order issued thereunder is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day during which the violation continues. Iowa Code § 455B.477(1).

22. The Attorney General, at the request of the DNR director with approval of the EPC, shall institute any legal proceedings, including an action for injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division IV, part 8, or to obtain compliance with the provisions of said part or the rules or orders issued thereunder. Iowa Code § 455B.477(3).

Facts

23. On September 29, 1989, Ginger registered with the DNR as the owner of three active petroleum USTs located at 502 N. Main in Everly, Iowa (the “Site”). The registered USTs consisted of two 4,000-gallon tanks containing gasoline, and one 2,000-gallon tank containing diesel. Ginger operated a service station at the Site under the name “L & L Service Standard.”

24. Ginger had control of, and responsibility for, the daily operation of the USTs.

25. On May 18, 1995, the DNR conducted an inspection of the USTs. Ginger informed the DNR inspector that the three USTs had been out of operation since March 1, 1995, and that no insurance had been carried on the USTs since at least that time.

26. On July 16, 1997, the DNR sent a compliance letter to L & L Service Standard requesting payment of delinquent tank management fees of \$975 for the 3 USTs, and proof of financial responsibility for the USTs. The letter notified Ginger that if the UST system was no longer in service, it needed to be permanently closed.

27. On September 7, 1999, the DNR sent L&L Standard a certified letter requiring Ginger to permanently close the USTs by December 22, 1999; however, this letter was returned to the DNR unclaimed.

28. On April 4, 2002, Ginger was sent a final notice, by certified mail, directing him to permanently close the USTs. The DNR received no response.

29. On March 11, 2003, an additional final notice was sent to Ginger by certified mail. Again, the DNR received no response from Ginger.

30. On October 21, 2003, the DNR director issued Administrative Order 2003-UT-18 to Ginger. A copy of the Order is attached hereto as Exhibit A, and by this reference is incorporated herein. The Order required Ginger to perform the following:

- a. permanently close the USTs in conformance with DNR rules within 60 days;
- b. provide a copy of a written contract to the DNR of the qualified contractor chosen to close the USTs within 14 days;
- c. pay delinquent tank management fees of \$2,145.00; and
- d. pay to the DNR an administrative penalty of \$5,750.00 within 60 days for violations of DNR UST rules.

31. The Administrative Order was sent to Roger Ginger, by certified mail, on October 23, 2003; however, the Order remained unclaimed after three notices.

32. Ginger was personally served with Administrative Order 2003-UT-18 on April 23, 2004, by a Clay County Deputy Sheriff, and did not appeal the order. A copy of the proof of service is contained on the last page of Exhibit A.

33. Ginger did not perform any of the actions required by Administrative Order 2003-UT-18. He did not pay the delinquent tank management fee, any of the penalty imposed, or any of the accrued interest on that penalty.

Violations

34. Ginger failed to permanently close USTs in violation of Administrative Order No. 2003-UT-18 and 567 Iowa Admin. Code 135.15(1)(c), 135.15(2)(d).

35. Ginger failed to pay tank management fees on the USTs in violation of Administrative Order No. 2003-UT-18 and 567 Iowa Admin. Code 135.3(5)(b).

36. Ginger failed to pay the \$5,750.00 administrative penalty, or any of the accrued interest on that penalty, in violation of Administrative Order 2003-UT-18.

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Ginger pursuant to Iowa Code section 455B.477(1) (2005) for each day of violation of Administrative Order No. 2003-UT-18, 567 Iowa Admin. Code 135.3(5)(b), 135.15(1)(c), and 135.15(2)(d) not to exceed five thousand dollars (\$5,000.00) for each day of violation;
- b. order Ginger to pay the administrative penalty of five thousand seven hundred and fifty dollars (\$5,750.00) imposed by Administrative Order No. 2003-UT-18, plus accrued interest pursuant to Iowa Code section 455B.109(3) (2005);
- c. order Ginger to pay the delinquent tank management fees of \$2,145.00 imposed by Administrative Order No. 2003-UT-218, and those fees due subsequent to the Administrative Order pursuant to Iowa Code section 455B.479, and 567 Iowa Admin. Code 135.3(5)(b); and

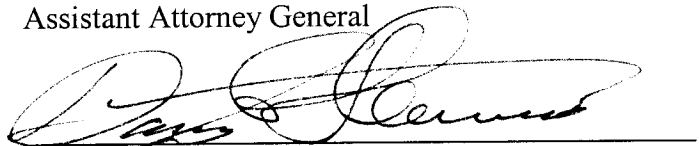
- d. issue an order permanently enjoining Ginger from any further violation of Administrative Order No. 2003-UT-18, 567 Iowa Admin. Code 135.3(5)(b), 135.15(1)(c), and 135.15(2)(d), and further requiring Ginger to:
- (1) within 10 days, submit to the DNR the name of the certified groundwater professional retained to complete the UST closure and environmental assessment activities required by this order;
 - (2) within 45 days, permanently close the USTs in conformance with DNR rules and submit a closure report to the DNR;
 - (3) in the event contaminated soil or groundwater is encountered during the closure of the USTs, complete a Tier 1 site assessment and submit a Tier 1 report to the DNR within 90 days of the UST closing; and
 - (4) in the event the DNR approves or is deemed to approve the Tier 1 assessment report, and a no action required classification is not obtained, within 180 days of the approval complete a Tier 2 site assessment and submit to the DNR a Tier 2 site cleanup report as provided in 567 Iowa Admin. Code 135.10.

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to the Defendant.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General



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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

Roger Ginger, d/b/a L & L Standard
UST NO. 8915566

ADMINISTRATIVE ORDER
NO. 2003-UT- 18

TO: Roger Ginger
Box 347
Everly, IA 51338

I. SUMMARY

This order requires you to do the following:

- Permanently close underground storage tanks (USTS) by removal or filling in place, conduct a soil and groundwater closure investigation and submit a closure report within sixty (60) days of receipt of this order. You are required to submit a written contract for the project within fourteen (14) days of receipt and provide written and oral notice to the Department prior to closure activities. *See Division V below.*
- Submit payment to the Department of overdue tank registration fees \$2,145 within fourteen (14) days of receipt of this order.
- Pay to the order of the Department an administrative penalty of \$5,750.00 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Collins
Iowa Department of Natural Resources
401 S.W. 7th, Suite I
Des Moines, Iowa 50309
Ph: 515/281-8879

Relating to appeal rights:

David Wornson
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817



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Roger Ginger**

II. JURISDICTION

This order is issued pursuant to Iowa Code §§455B.474(1)(f)(10) and 455B.476, which authorize the Director to issue any order necessary to secure compliance with the Iowa Code Division IV, Part 8 and Department rules contained in Chapter 567 I.A.C. 135. Iowa Code section 455B.109, section 455B.476 and agency rules in Chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Roger Ginger registered with the Department on September 29, 1989 as the owner of three petroleum underground storage tanks (USTS) located at 502 N. Main, Everly, Iowa. These USTS do not meet the upgrade standards required by Department rules. Roger Ginger has been the owner and operator of the USTS at all times relevant to this order. According to county assessor records, Roger Ginger is the current owner of the property at 502 N. Main, Everly, Iowa.
2. On May 18, 1995, the Department conducted an inspection which documented the 3 tanks had been out of operation since March 1, 1995 and that no insurance had been carried on the tanks since at least that time.
3. On July 16, 1997, the Department issued a compliance letter to L & L Service Standard which requested payment of delinquent tank tag management fees of \$975 for the 3 tanks at the above referenced property. This letter also stated that if the tank system is no longer in service then the tank must be permanently closed. A response was requested by August 15, 1998.
4. On September 7, 1999, the Department sent L & L Service Standard a compliance letter stating that the tanks must be permanently closed by December 22, 1999. This letter also requested that a closure notification form be completed and submitted to the Department within 30 days upon receipt of this letter.
5. On April 4, 2002, Mr. Ginger was sent a final notice by certified mail. This notice again informed him that permanent closure was necessary. The Department received no response.
6. An additional final notice was sent, by certified mail, to Mr. Ginger on March 11, 2003. This notice informed Mr. Ginger that if he did not permanently close the tanks and submit a closure report to the Department within 60 days, the matter would be referred for further enforcement including assessment of a penalty. The Department has received no response from Mr. Ginger.
7. Mr. Ginger has not paid the required \$195 per year in tank management fees for the years 1993 through 2003. The amount of delinquent tank management fees due to the Department is \$2,145.

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ADMINISTRATIVE ORDER
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IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (§§ 455B.471 - 455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules at Chapters 567 I.A.C. 135 and 136.
2. Iowa Code § 455B.471(6) defines "owner" of underground storage tanks. These USTS were in service after July 1, 1985. Roger Ginger is an owner as defined and responsible for taking the corrective action as required by this order.
3. Iowa Code § 455B.471(5) defines an "operator" of underground storage tanks as "... a person in control of, or having responsibility for, the daily operation of the underground storage tank." Roger Ginger is an operator as defined and responsible for taking the actions required by this order.
4. Owners and operators of USTS are required to maintain proof of an approved form of financial responsibility on the USTS until they are permanently closed. See 567 IAC 136.
5. Tanks that have been temporarily closed for more than 12 months must be permanently closed by removal or filling in place unless the system meets and continues to meet tank performance and upgrade standards. See 567 IAC 135.15(1)"b". The Department may grant an extension of the temporary closure period. The tank closure process requires prior notice and a soil and groundwater closure investigation report. The referenced USTS do not meet tank upgrade standards.
6. Iowa Code section 455B.473 requires owners and operators to register underground storage tanks and the payment of an initial \$10 registration fee. Iowa Code section 455B.479 requires the payment of an annual tank management fee of \$65 per tank effective April 1 of each year. Owners and operators must register and pay fees for newly installed tanks within 30 days of their existence. See 135.3(3)"e"
7. Roger Ginger is in violation of the tank closure rules and is required to permanently close the USTS by removal or filling in place, complete a soil and groundwater investigation and submit a closure report in accordance with Department rule 135.15. He has failed to pay \$195 in annual tank management fees for the years 1993 through 2003. A total of \$2,145 is due and payable to the Department.

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V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Permanently close underground storage tanks (USTS) by removal or filling in place, conduct a soil and groundwater closure investigation, and submit a closure report within sixty (60) days of receipt of this order in accordance with Department rule 135.15. You are required to submit a tank closure notification form to the Department and provide notice to the Department at least 24 hours prior to any tank removal or soil and groundwater sampling activities. Soil and groundwater samples will not be accepted without Department supervision unless expressly waived.
2. Submit within fourteen (14) days of receipt of this order a copy of a written contract with a qualified contractor the terms of which provide for closure of the tank within the timeframes established above and in accordance with Department rules.
3. Submit past due payment of tank registration fees in the amount of \$2,145 within fourteen (14) days of receipt of this order.
4. Pay to the order of the Department an administrative penalty of \$5,750.00 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 and 455B.476 authorize the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See chapter 567--10 of the Iowa Administrative Code (IAC). Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. The assessment rationale is as follows although the Department reserves the right to modify the rationale based on additional evidence:

ECONOMIC BENEFIT: Assuming the party complies with the terms of this order, he has gained an economic benefit based on the delayed costs of completing closure of these USTS. The USTS were determined to have been taken out of operation at least as of March 1995 and would have been required to be removed at least by August 1996. The cost of completing tank closure is conservatively estimated to be \$4,000. Applying

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an interest rate of 0.8 percent per month, the economic benefit is calculated to be approximately ($\$4,000 \times .008 \times 86 \text{ months} = \$2,752$). For this factor, \$2,750 is assessed.

GRAVITY: The USTS at this location have been out of operation since 1995 and should have been closed and the site tested as early as 1996. The delay in determining if the site is contaminated increases the potential risks to health, safety and the environment. For this factor, \$1,000 is assessed.

CULPABILITY: Mr. Ginger has been notified several times of the duty to close the tanks without response. He has failed to communicate with the Department or provide any reasons to explain, excuse or mitigate his responsibility to close the tanks. For this factor, \$2,000 is assessed.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.476, and 561--7.5(1), Iowa Administrative Code (I.A.C.), as adopted by reference by chapter 567--7, I.A.C., a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 561--7, Iowa Administrative Code.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.476 and 455B.477.



JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 21 day of
October, 2003

IN THE IOWA DISTRICT COURT FOR CLAY COUNTY

Case Name GINGER ROGER
VS.

Return of Service:

Type of
Service Code

X Personal	1
Dwelling/Substitute	2
Hotel, Boarding/Rooming House	3
Corporation/Association	4
Official (State, County, City)	5
Spouse Away from Residence	6
Other	7
Diligent Search	8

Case No. 2003=UT-18
Notice Recd. This Date 4/16/2004

State of Iowa)
CLAY County)

I Certify That I Served a Copy of:

ORDER GINGER ROGER	At EVERLY	In CLAY
(Name)	(Address)	County On 4/23/2004 20:30 (1) (Date) (Time)

FEES CHARGED TO/PAID BY ATTY:
MARLA GALLARDO
IOWA DNR

FEES:

SERVICE	15.00	DATE	CHECK #
MILEAGE	7.50		
COPY	.50		
Total	23.00	RANDY W. KRUKOW	, Sheriff

By Jeremy Bellis 2/1-4, DEPUTY SHERIFF
BELLIS, JEREMY KYLE

Note: Copy of original notice, if served, must be attached to this form.

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